

# Combating Domestic Violence in China – Problems, Progress and Prospects

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*“You can pick up the law or you can pick up a fruit knife. But it’s still easier for people to pick up the knife than the law, and that’s what’s happening.” Kim Lee, 2013*

When the People’s Republic of China was founded in 1949, the women of China were promised liberation from the bonds of “backwards”, “feudal” Confucian patriarchy and related exploitative practices. Since then, Chairman Mao’s infamous declaration calling for gender equality – “*women hold up half the sky*”<sup>1</sup> – has been transposed into various laws, regulations and policies aimed at elevating the status of women as part of China’s march to modernity.<sup>2</sup>

As the notions of gender equality and women’s rights have taken root in modern China, one important social problem gaining increased recognition and response from the Party-State and civil society alike is domestic violence.<sup>3</sup> Where in 2000, the official line was that violence against women was not a “serious social problem in China,”<sup>4</sup> in recent years Beijing has begun to acknowledge that domestic violence is by no means an infrequent occurrence, particularly in rural areas.<sup>5</sup>

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1 “妇女能顶半边天” (*funü neng ding banbiantian*).

2 See, eg, 《中华人民共和国妇女权益保障法》 [Law of the People’s Republic of China on the Protection of Rights and Interests of Women] (People’s Republic of China) National People’s Congress, 3 April 1992, art 2 (“Women shall enjoy equal rights with men in all aspects of political, economic, cultural, social and family life.”) See, further, Shen Guoqin, ‘The Development of Women’s NGOs in China’ in Li Yuwen (ed), *NGOs in China and Europe* (Ashgate, 2011), on the relatively warm reception of women’s NGOs in modern China, the goal of gender equality pursued by such NGOs coinciding with government policies on women’s liberation and social development.

3 It is not my intention to suggest that children and men are not also victims of domestic violence; however, the focus of this article is domestic violence as an important aspect of women’s rights.

4 Human Rights in China, ‘Caught Between Tradition and the State: Violations of the Human Rights of Chinese Women’ (1995-1996) 17 *Women’s Rights Law Reporter* 285, 288.

5 For example, in its February 2014 press release, the Supreme People’s Court reported that domestic violence is a serious social problem that occurs in almost one quarter of Chinese families (reported by Susan Finder, *Supreme People’s Court Focuses on Domestic Violence* (16 March 2014) Supreme People’s Court Monitor <http://supremepeoplescourtmonitor.com/category/domestic-violence/>).

To date, however, this shift in central rhetoric has not always resulted in meaningful protection for victims. While general, aspirational and vague references to the importance of preventing domestic violence have been inserted into various central statutes, strong and specific national measures to prevent such abuse and provide adequate remedies for its victims are lacking.

To give just a few examples: China's *Marriage Law* was amended in 2001 to provide that "family violence [家庭暴力—*jiating baoli*] is prohibited",<sup>6</sup> without defining the term or stipulating possible sanctions for abusers. The *Criminal Law* is only slightly more concrete, criminalizing "mistreatment of family members" (undefined); however such mistreatment is only a crime if the case is "serious" (also undefined).<sup>7</sup> Moreover, unless the mistreatment results in death or serious bodily injury, the *Criminal Law* only permits prosecution for family-member mistreatment if requested by the victim. This provision potentially stymies domestic violence prosecution, as victims are frequently unable or unwilling to pursue criminal charges against their abuser.<sup>8</sup>

Even where a victim is able and willing to pursue prosecution, the question of whether mistreatment is sufficiently serious so as to result in criminal liability is left to the discretion of judges. This can be problematic given that many Chinese judges lack basic training in the gravity and complexities of domestic violence. Accordingly, judicial responses to abuse cases frequently reflect traditional cultural beliefs about the heaven-sent rights of men over their wives, and that the violent exercise of that authority is morally legitimate. It is reportedly common for courts to treat offenders leniently or to dismiss alleged spousal abuse as justifiable or "not serious".<sup>9</sup> Similar attitudes persist among law enforcement officers and the procuracy, with domestic violence commonly

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6 «中华人民共和国婚姻法» [Marriage Law of the People's Republic of China] (People's Republic of China) National People's Congress, 10 September 1980, art 3 (*Marriage Law*).

7 «中华人民共和国刑法» [Criminal Law of the People's Republic of China] (People's Republic of China) National People's Congress, 14 March 1997, art 260: "虐待家庭成员，情节恶劣的" (*Nüedai jiating chengyuan, qingjie elie de*).

8 Yuhong Zhao, 'Domestic Violence in China: In Search of Legal and Social Responses' (2000) 18 *UCLA Pacific Basin Law Journal* 211, 227.

9 Zhao (ibid 226) provides an illustrative case study – a county court accepted proof of ten instances of violent battering of a wife by her husband, supported by hospital records, resulting in broken ribs, impaired eye-sight and concussion. The court refused to convict, finding that "ten instances of battering over a period of twenty years cannot be characterized as occurring with high frequency, an essential element of the crime" and that, moreover, this was not a case of mistreatment because the violence "occurred with good cause" (wife refusing to obey her husband regarding family matters).

viewed as a private family issue, best resolved without official involvement, rather than a general societal harm.<sup>10</sup>

The approach to domestic violence in the context of family law is, unsurprisingly, also piecemeal and problematic. As yet, Chinese divorce law has not formulated an appropriate response to divorce cases involving allegations of spousal abuse. The starting point is promising – the *Marriage Law* provides for contested divorce on a number of grounds, including “breakdown of mutual affection” and “family violence”.<sup>11</sup> Moreover, a victim of family violence is entitled to damages in divorce proceedings.<sup>12</sup> However, domestic violence victims face a number of challenges when it comes to divorce proceedings. First, a victim must provide “strong evidence” – such as police reports – to corroborate claims of domestic abuse.<sup>13</sup> This is difficult in a society that often fails to take claims of domestic abuse seriously – despite progress, Chinese domestic abuse victims continue to report being told by family, friends and even police officers to settle their “family quarrels” within the family, rather than filing a formal complaint.<sup>14</sup>

Secondly, where a party seeks a contested divorce, the *Marriage Law* requires the court to carry out compulsory mediation before adjudicating either divorce or denial.<sup>15</sup> Judicial mediation is a defining feature of civil procedure in contemporary China, and is congruent with prevailing social/cultural norms that emphasize social harmony and reconciliation. In the past, in line with conservative views on divorce, the mediation requirement has been applied aggressively and coercively, with divorce petitions frequently denied in favour of so-called “mediated reconciliation”.<sup>16</sup> More recently, Professor He’s research suggests that rather than mediated reconciliation, adjudicated denial is the new baseline for first-time contested divorce petitions, even when it is manifestly apparent that the marriage is not salvageable and the couple will not

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<sup>10</sup> Ibid 232; see, further, Hai-Ching Yang, ‘An Alternative to Impact Litigation in China: The Procurator as a Legal Avenue for Cases in the “Private Family Sphere” of Domestic Violence’ (2011) 20 *Pacific Rim Law and Policy Journal* 237, 250.

<sup>11</sup> *Marriage Law* art 32.

<sup>12</sup> Ibid art 46.

<sup>13</sup> Xin He and Kwai Hang Ng, ‘In the Name of Harmony: The Erasure of Domestic Violence in China’s Judicial Mediation’ (2013) 27 *International Journal of Law, Policy and Family* 97.

<sup>14</sup> See, generally, Zhao, above n 8; He and Ng, *ibid*.

<sup>15</sup> *Marriage Law* art 32.

<sup>16</sup> Philip Huang, ‘Divorce Law Practices and the Origins, Myths, and Realities of Judicial “Mediation” in China’ (2005) 31 *Modern China* 151, 155. English readers will understand “mediation” to denote a voluntary process; whereas courtroom mediation in China, as Huang describes, frequently “employed distinctive methods and a variety of subtle and not-so-subtle pressures [eg. ideological education and moral suasion], as well as material inducements, in ways that would be astonishing in an American courtroom” (156).

reconcile.<sup>17</sup> These practices are alarming, as they give rise to the possibility of abused women, having worked up the courage and fortitude to seek divorce despite threats to their safety, being denied judicial relief and forced back into a dangerous home situation.<sup>18</sup> In all, conservative attitudes to contested divorce persist in many Chinese courtrooms – combined with a lack of training about the gravity and wrongfulness of domestic violence, it is clear that protection of domestic violence victims is easily compromised in divorce proceedings.

Finally, in cases where divorce is granted, He and Ng report that even if domestic violence has been established during the hearing, references to past abuse are often suppressed or underplayed during judge-led mediation on questions of property division and child custody.<sup>19</sup> Blame is excluded from the discourse, for the sake of facilitating agreement, but at the risk of compromising the victim's right to receive compensation for domestic abuse.

Those are just some of the problems when it comes to taking domestic violence in China seriously. But there has also been progress. In recent years, a number of high-profile cases have brought much-needed attention to the issue. Most notably, in February 2013, a Beijing court granted a divorce to Kim Lee, the American wife of Chinese B-list celebrity Li Yang. A few years earlier, Kim Lee went public on social media websites, including with graphic photographs, with allegations that her husband was abusive. She faced grave obstacles along the way, including unsympathetic and uncooperative police officers, but eventually her battle for due legal protection and recognition of her plight culminated in the Beijing decision. The court granted her a divorce, and issued a three-month protection order against Li Yang – the first time such an order had been granted in Beijing. In addition to acknowledging the domestic violence, the court ordered Li Yang to pay \$9000 in compensation, and a further \$2.1 million as part of the divorce.

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<sup>17</sup> Xin He, 'Routinization of Divorce Law Practice in China: Institutional Constraints' Influence on Judicial Behaviour' (2009) 23 *International Journal of Law, Policy and the Family* 83, 87. He also finds that adjudication *for* divorce is readily granted when a plaintiff reinstates the same divorce petition a second time, concluding that "adjudication against divorce for first-time petitions and adjudication for divorce for second-time petitions all serve the same function: to increase the judges' performance and to reduce their risk of being adversely affected under the current incentive structures" (101).

<sup>18</sup> See, for example, the case described in He (ibid) at 102, in which an abused wife, after adjudicated denial of her divorce petition, continued to suffer grave physical violence at the hands of her husband, and became almost paralyzed – "Had divorce been granted last time, none of [this] would have taken place ... all I want now is a divorce".

<sup>19</sup> He and Ng, above n 13.

Kim Lee quickly became a symbolic hero for domestic violence victims in China, and her case ignited interest and debate about their plight. In particular, Kim Lee's persistence in seeking (Chinese) legal remedies and vindication is an important example to other victims of abuse in a society and legal system which too often denies the gravity of the problem and the need for legal reform and protection, meaning untold women (and, presumably, men, although the majority of victims are women) are left to either put up with abuse, leave without support or protection, or take matters into their own hands. As Kim Lee put it, "You can pick up the law or you can pick up a fruit knife. But it's still easier for people to pick up the knife than the law, and that's what's happening".<sup>20</sup>

To give an example, at the same time as Kim Lee's case was being decided in Beijing, the Sichuan High Court rejected an appeal against the conviction of Li Yan, a woman who was sentenced to death in August 2011 for killing her husband. Li Yan struck her husband with the butt of a rifle in the course of a fight; her lawyer said that her husband had been threatening to shoot her with the rifle. Numerous witness statements speaking to her long-term abuse at the hands of her husband were submitted to the court. However, in the absence of official reports – authorities had declined to investigate Li Yan's case – these were not considered sufficient to prove domestic violence and accordingly the abuse was not taken into account in her conviction and sentencing.<sup>21</sup>

Clearly reform, and urgent reform at that, is needed to provide safeguards. National domestic violence-specific legislation should be enacted to address various gaps in domestic violence prevention and victim protection. Domestic violence should be capable of public prosecution, rather than dependent on the victim's initiative. In criminal and family law cases alike, courts need clear guidance on the definition of domestic violence; how to deal with cases, such as that of Li Yan, involving "battered-women" syndrome;<sup>22</sup> special procedural/evidentiary rules that take into account the complexity of domestic violence and attendant power/control dynamics; and the power to make emergency and final protective orders. In divorce proceedings, domestic violence victims should be entitled to obtain exemption from mediation, given

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20 Didi Kirsten Tatlow, 'In China's Most-Watched Divorce Case, 3 Victories, 1 Defeat', *New York Times IHT Rendezvous* (online), 4 February 2013 [http://rendezvous.blogs.nytimes.com/2013/02/04/in-chinas-most-watched-divorce-case-3-victories-1-defeat/?\\_php=true&\\_type=blogs&\\_r=0](http://rendezvous.blogs.nytimes.com/2013/02/04/in-chinas-most-watched-divorce-case-3-victories-1-defeat/?_php=true&_type=blogs&_r=0).

21 'China: Commute Death Sentence in Domestic Violence Case', *Human Rights Watch*, 30 January 2013 <http://www.hrw.org/news/2013/01/30/china-commute-death-sentence-domestic-violence-case-0>.

22 In one provincial study, it was found that over 50% of female criminal delinquency cases resulted from domestic violence (Zhao, above n 8, 222).

the power imbalance and emotional distress involved in confronting and negotiating with one's abuser.<sup>23</sup> Police officers, prosecutors and judges need training on appropriate responses to domestic violence cases, and clearly defined duties of reporting and intervention.<sup>24</sup>

For all that remains to be done, there are signs that the authorities are increasingly taking the problem seriously. In the past decade, dozens of provinces have enacted local legislation and policies against domestic violence.<sup>25</sup> In 2011, a pilot program saw courts in ten provinces authorized to issue protection orders at the request of domestic violence victims.<sup>26</sup> Although progress on a central, specialized domestic violence law has been slow, the law is expected to pass sometime before 2018.<sup>27</sup> In the meantime, Shenzhen, a Special Economic Zone that often functions as testing ground for planned national initiatives, will adopt domestic violence regulations by the end of the year,<sup>28</sup> and the Supreme People's Court has announced it will issue a judicial interpretation<sup>29</sup> on domestic violence before 2014 is out, to provide more specific guidelines for courts on the definition, classification and criminal punishment of domestic violence.<sup>30</sup> And in a further sign of the government's commitment to tackling domestic violence, in June the Court overturned Li Yan's conviction.<sup>31</sup>

The Li Yan turnaround is particularly encouraging, as the move was largely in response to a groundswell of criticism of the judiciary's mishandling of a case

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<sup>23</sup> He and Ng, above n 13, 26; Zhao, above n 8, 237.

<sup>24</sup> Zhao, above n 8, 244.

<sup>25</sup> Yang, above n 10, 253.

<sup>26</sup> 'Court Tries Woman Protection Program', *China Daily* (online), 23 February 2012

[http://www.chinadaily.com.cn/china/2012-02/23/content\\_14678191.htm](http://www.chinadaily.com.cn/china/2012-02/23/content_14678191.htm).

<sup>27</sup> Didi Kirsten Tatlow, 'Adding Elders and Children to a Domestic Violence Law', *New York Times Sinosphere* (online), 7 March 2014

[http://sinosphere.blogs.nytimes.com/2014/03/07/adding-elders-and-children-to-a-domestic-violence-law/?\\_php=true&\\_type=blogs&\\_r=0&gwh=512993F07E89D89AD61780787C2A8062&gwt=pay](http://sinosphere.blogs.nytimes.com/2014/03/07/adding-elders-and-children-to-a-domestic-violence-law/?_php=true&_type=blogs&_r=0&gwh=512993F07E89D89AD61780787C2A8062&gwt=pay).

<sup>28</sup> Susan Finder, 'The Supreme People's Court on Domestic Violence Legislation', *Supreme People's Court Monitor*, 31 August 2014

<http://supremepeoplescourtmonitor.com/2014/08/31/the-supreme-peoples-court-on-domestic-violence-legislation/>.

<sup>29</sup> 司法解释 (*sifa jieshi*) – quasi-legislative instruments issued by the Supreme People's Court to provide guidance to lower courts on the interpretation and application of central legislation.

<sup>30</sup> Finder, above n 28.

<sup>31</sup> Li Hui and Sue-Lee Wee, 'China's Supreme Court Overturns Death Sentence for Victim of Domestic Violence: Lawyer', *Reuters* (online), 24 June 2014,

<http://www.reuters.com/article/2014/06/24/us-china-crime-abuse-idUSKBN0EZ1GG20140624>.

involving heinous domestic abuse. This indicates that advocacy groups are making progress in raising public awareness of the issue. Further national law reform that signals clearly the Party-State's commitment to the prevention of domestic violence could assist in further shifting cultural/societal norms. For too long, Chinese society has been at best uneducated about the issue of domestic violence, and at worst seen it as unproblematic. Male superiority is deeply ingrained in traditional Chinese culture. Confucianism, the ruling doctrine for most of China's imperial era, presumes that humanity is inherently unequal, and that social harmony is attained when everybody "knows his place." For the virtuous woman, this required heeding the "three obediences"<sup>32</sup> – obeying her father before marriage, her husband during marriage, and her sons in widowhood. In some Chinese households, particularly in rural areas, similar beliefs about the proper authority of men over women persist today. Kim Lee's husband's lawyer, for example, defended his client's actions, arguing that "domestic violence is when a man hits and injures his wife frequently over a long time but has no reason, but my client did that because he had conflicts with his wife".<sup>33</sup> Li Yang himself responded to his wife's allegations with something far short of contrition: "Our problem involves character and cultural differences...I hit her sometimes but I never thought she would make it public since it's not Chinese tradition to expose family conflicts to outsiders".<sup>34</sup>

Perhaps not, but perhaps the example of Kim Lee, a tenacious American who brought her expectations about finding justice and vindication in the law with her to China, and successfully found some measure of both in the Chinese system, will challenge those Chinese traditions, at least in some homes.

China's social landscape has changed dramatically since the reform and opening era began in the 1980s. For better or for worse, the traditional view that "it is better to save a marriage than to build ten bridges" is being questioned, there is less social pressure on unhappy couples to reconcile and divorce rates are on the rise. What is needed is a concomitant increase in social pressure against domestic violence and in favour of women's protection.

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<sup>32</sup> 三从四德 — *San Cong Si De* (Three Obediences and Four Virtues).

<sup>33</sup> Evan Osnos, 'A Landmark Domestic-Violence Case in China', *The New Yorker* (online), 5 February 2013 <http://www.newyorker.com/news/evan-osnos/a-landmark-domestic-violence-case-in-china>.

<sup>34</sup> Zhao Yanan, 'Renowned Teacher Admits Abusing His Wife', *China Daily* (online), 13 September 2011 [http://www.chinadaily.com.cn/cndy/2011-09/13/content\\_13670686.htm](http://www.chinadaily.com.cn/cndy/2011-09/13/content_13670686.htm).